

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 27, 2000**

**IN RE:**

**UNITED TELEPHONE - SOUTHEAST  
1999 ANNUAL PRICE REGULATION  
FILING**

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**DOCKET NO. 99-00798**

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**ORDER APPROVING PRICE REGULATION FILING AND  
DENYING CONSUMER ADVOCATE DIVISION'S  
COMPLAINT OR MOTION TO INTERVENE**

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This matter came before the Tennessee Regulatory Authority (the "Authority") at the regularly scheduled Authority Conference held on July 11, 2000 for consideration of United Telephone – Southeast's ("UTSE") 1999 Annual Price Regulation (or "price cap") Filing (the "Filing") and for consideration of the Complaint or Petition to Intervene (the "Complaint") filed by the Consumer Advocate Division of the Office of the Attorney General (the "Consumer Advocate").

**UTSE's Filing**

On October 14, 1999, UTSE submitted its 1999 Filing for approval by the Authority. This Filing represents UTSE's calculations of its 1999 Price Regulation Index ("PRI") and Service Price Index ("SPI") pursuant to Tenn. Code Ann. § 65-5-209, UTSE's price regulation plan,<sup>1</sup> and the price cap methodology approved by the Authority.<sup>2</sup>

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<sup>1</sup> UTSE elected to become a price regulated company pursuant to Tenn. Code Ann. § 65-5-209 on June 16, 1995; accordingly, UTSE submitted a price regulation plan, which the Authority approved on September 20, 1995.

<sup>2</sup> In Authority Docket No. 96-01423, at the Authority's request, UTSE and the Consumer Advocate filed a joint stipulation on January 27, 1997 in which they agreed to a methodology and formula for use in calculating the amount of any price increases by UTSE under its price regulation plan. The stipulation was

UTSE's Filing does not propose to change any of its rates for basic or non-basic service. UTSE's initial Filing of October 14, 1999 proposed to set the 1999 Price Regulation Index (PRI) for basic services at 99.3257. By letter to the Authority dated November 24, 1999, UTSE restated the 1999 PRI for basic services at 100, which is consistent with the approved methodology.

### **The Consumer Advocate's Complaint**

This matter was originally scheduled for consideration of UTSE's Filing at the regularly scheduled Authority Conference held on November 23, 1999. On November 19, 1999, the Consumer Advocate filed its Complaint or Petition to Intervene. At the November 23, 1999 Conference, therefore, the Authority deferred action on this matter to allow UTSE an opportunity to respond to the Complaint.

The Consumer Advocate states in its Complaint that:

The main purpose of this Complaint and/or Petition is to ensure that the Consumer Advocate Division does not waive any rights or issues regarding Docket No. 98-00626, United Telephone-Southeast, Inc.'s 1998 Price regulation Plan, in which the Consumer Advocate Division intervened.<sup>3</sup>

The Consumer Advocate objects to UTSE's Filing for two reasons. First, the Consumer Advocate argues that the price regulation statute, Tenn. Code Ann. § 65-5-209, requires a reduction in UTSE's rates based on the 1999 figures presented by UTSE, while UTSE has not proposed in its Filing to change its rates at all.<sup>4</sup> Second, the Consumer

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signed by representatives of the Consumer Advocate and UTSE as well as Citizens Telecommunications of Tennessee, Inc., BellSouth Telecommunications, Inc., and AT&T of the South Central States, Inc. In its Final Order in Docket No. 96-01423, entered on September 4, 1997, the Authority approved the joint stipulation.

<sup>3</sup> Complaint, November 19, 1999, at 1.

<sup>4</sup> Complaint, November 19, 1999, at 1.

Advocate argues that UTSE's "proposed plan still fails to properly impute revenues from directory assistance and yellow pages revenues."<sup>5</sup>

The Consumer Advocate states that the Authority should convene a contested case in this matter on two alternative grounds. The first appears to be that UTSE's Filing is already a contested case by definition. In support, the Consumer Advocate cites the definition of contested case in Tenn. Code Ann. § 65-2-101(2).<sup>6</sup> The second basis is that the Consumer Advocate brings a contested case against UTSE pursuant to Tenn. Code Ann. § 65-5-210(a).<sup>7</sup> That section states that:

In addition to any other jurisdiction conferred, the authority shall have the original jurisdiction to investigate, hear and enter appropriate orders to resolve all contested issues of fact or law arising as a result of the application of Acts 1995, ch. 408.

In the alternative to the convening of a contested case, the Consumer Advocate petitions the Authority for intervention in this matter pursuant to Tenn. Code Ann. § 65-2-107.<sup>8</sup>

### **Findings**

After careful review of the record in this matter, the Authority finds and concludes that UTSE's Filing, as amended by UTSE's letter to the Authority of November 24, 1999, should be approved. The Authority finds that UTSE's Filing complies with Tenn. Code

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<sup>5</sup> Complaint, November 19, 1999, at 1.

<sup>6</sup> Complaint, November 19, 1999, at 2. Tenn. Code Ann. § 65-2-101(2) states, in pertinent part: "'Contested case' means all proceedings before the authority in which the legal rights, duties, or privileges of specific parties are determined after a hearing before the authority . . ."

<sup>7</sup> Complaint, November 19, 1999, at 3.

<sup>8</sup> Complaint, November 19, 1999, at 4. Tenn. Code Ann. § 65-2-107 states: "All persons having a right under the provisions of the laws applicable to the authority to appear and be heard in contested cases as defined in this chapter shall be deemed parties to such proceedings for the purposes of this chapter. In addition, the authority may upon motion allow any interested person to intervene and become a party to any contested case."

Ann. § 65-5-209 and the approved methodology, as well as all Authority orders concerning UTSE's price cap filings in prior years.

The Authority further finds and concludes that the Consumer Advocate's Complaint be denied. Although the Consumer Advocate would make the convening of a contested case seem mandatory, the law is clear that this decision is within the discretion of the Authority. The Tennessee Supreme Court has specifically held that Tenn. Code Ann. § 65-5-203, which empowers the Authority to determine the justness and reasonableness of utility rate increases, leaves the convening of contested cases in the Authority's discretion.<sup>9</sup> Similarly, Tenn. Code Ann. § 65-5-210(a), cited in the Consumer Advocate's Complaint,<sup>10</sup> clearly gives the Authority discretion as to convening a contested case.<sup>11</sup>

In view of the circumstances of this case, the Authority hereby exercises its discretion and declines to convene a contested case. As the Consumer Advocate states, the main purpose of its Complaint is to ensure that the Consumer Advocate does not waive any rights or issues regarding Authority Docket No. 98-00626. The Consumer Advocate has thoroughly pursued and the Authority has issued a final ruling on the issues raised in the instant Complaint in Authority Docket Nos. 98-00626 and 96-01423.<sup>12</sup> Reopening these issues in this docket would serve no useful purpose and would waste judicial resources.

For the same reason, to the extent the Complaint is a petition for intervention, this too is denied. Tenn. Code Ann. § 4-5-310, which provides for intervention, requires a

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<sup>9</sup> *Consumer Advocate Division, Office of the Attorney General v. Greer*, 967 S.W.2d 759, 763 (Tenn. 1998).

<sup>10</sup> Complaint, November 19, 1999, at 3.

<sup>11</sup> The Consumer Advocate's suggestion that this is already a contested case by definition would render the statutory framework for contested cases irrelevant, which is obviously not the legislature's purpose. Tenn. Code Ann. § 65-2-101(2) is merely a definition section and does not confer rights or set forth procedure.

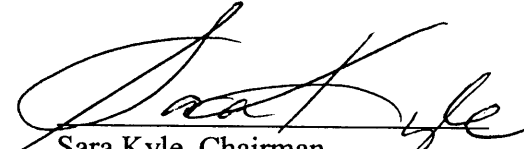
<sup>12</sup> Both of these dockets are currently before the Court of Appeals. The Consumer Advocate has argued the issues raised in its Complaint in both of these dockets in appellate briefs and oral argument before the Court.

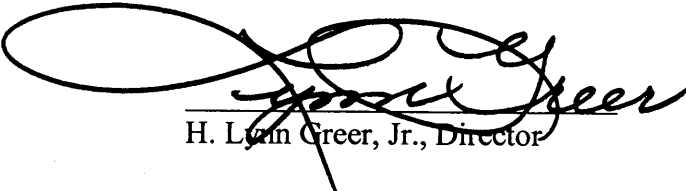
determination that “the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.” Because the Consumer Advocate has already contested the issues it raises here and merely seeks to preserve its rights and restate those issues on the occasion of UTSE’s 1999 Filing, granting intervention to the Consumer Advocate would impede the orderly and prompt conduct of these proceedings.

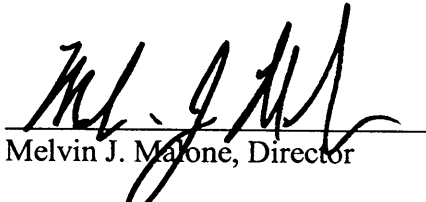
Upon review of the Filing and Complaint and of the entire record in this matter, at the July 11, 2000 Authority Conference, the Authority unanimously denied the Consumer Advocate’s Complaint and approved UTSE’s Filing.

**IT IS THEREFORE ORDERED THAT:**

1. The Complaint or Motion to Intervene in this matter filed by the Consumer Advocate Division of the Office of the Attorney General is denied;
2. The 1999 Annual Price Regulation Filing of United Telephone – Southeast, as amended, is approved;
3. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order; and
4. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary